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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re Mathias H., A Person Coming Under  
the Juvenile Court Law.

SOLANO COUNTY DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

Maria H. and Eric H.,

Defendants and Appellants.

A145624 & A146233

(Solano County Super. Ct.  
No. J42882)

In this consolidated dependency appeal, Eric H. (father) and Maria H. (paternal grandmother) seek review of certain decisions of the juvenile court refusing to place father's young son Mathias H. (born September 2014) in the home of the paternal grandmother. Specifically, the paternal grandmother appeals from the juvenile court's June 2015 dispositional orders failing to consider her for placement under section 361.3 of the Welfare and Institutions Code as well as from the court's order of July 23, 2015, denying her request for a temporary guardianship of the minor (July 2015 Order Denying

Placement).<sup>1</sup> Father appeals only from the July 2015 Order Denying Placement. Because father has forfeited his right to challenge the juvenile court's July 2015 decision by failing to object to it in the court below and because we see no merit in any of the paternal grandmother's contentions, we affirm.

## **I. BACKGROUND**

Mathias' mother, Beatrice L. (mother), has a long history of unresolved substance abuse issues, including methamphetamine use. In fact, issues of substance abuse and neglect led to her three oldest children (C.M., A.H., and I.H.) becoming dependents of the Alameda County juvenile court in May 2010. At the time of Mathias' birth in September 2014, these three half-siblings were living with mother under a family maintenance plan. Shortly thereafter, however, they were removed from mother's care by the Alameda County child welfare agency because mother had failed to address the issues that brought the family before the juvenile court. At the same time, mother agreed to a safety plan for Mathias whereby she would not remove him from the care of the paternal grandmother without permission. This left mother caring for two other half-siblings of the minor, A.S.H. (born October 2010) and I.R.L. (born May 2013).

Father also has a history of substance abuse, including methamphetamine use. The paternal grandmother, with whom father lives, reported that, on September 5, 2014, father came home drunk and punched holes in the front door, leading her to contact the police. Thereafter, on January 10, 2015, father was hospitalized after experiencing hallucinations, psychosis, and an altered mental state. According to father, this incident was the result of him drinking excessive amounts of alcohol at a party. However, emergency room personnel later confirmed that father had been hospitalized due to symptoms of methamphetamine induced psychosis, agitation, and paranoia. Moreover, father admitted past and recent methamphetamine use to hospital staff.

On January 30, 2015, the Solano County Department of Health and Social Services (Department) received a referral regarding Mathias, A.S.H., and I.R.L.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Specifically, the reporting party stated that mother was living with A.S.H. and I.R.L. in a storage unit at an apartment complex, without any running water. The reporting party believed mother to be using methamphetamine, described her as violent, and stated that she “roams” the complex. In addition, according to the reporting party, father treats Mathias “ ‘like a doll,’ ” and, while the parents were arguing, Mathias’ stroller fell over and the minor fell on his face. As a result of this referral, mother was arrested on February 6, 2015, for possession of a controlled substance, two counts of probation violation, petty theft, and willful cruelty to a child. Subsequently, I.R.L. was found with an unexplained bruise on her right shoulder blade and an unexplained burn to her stomach. I.R.L. was detained on February 11, 2015, and placed in foster care. A.S.H. and Mathias remained in the custody of various paternal relatives.

On January 20, 2015, shortly after his hospitalization, father indicated to the Department that he was unable to care for Mathias and wanted the paternal grandmother to take guardianship of the minor until he could get his life in order. The Department therefore referred father and the paternal grandmother to the Kinship Navigator program for assistance. As of February 6, 2015, however, the paternal grandmother had only made one phone call to the Kinship Navigator and had not filed for guardianship. On February 9, 2015, father and the paternal grandmother signed a safety plan, agreeing to file for guardianship of Mathias by February 13. Nevertheless, as of February 17, 2015, although the paternal grandmother had picked up an application, she had failed to make the necessary filing.

In the meantime, the Department had received another referral regarding Mathias on February 16, 2015, stating that mother had arrived at the paternal grandmother’s residence unannounced and upset and had taken the minor from his father’s care. Shortly after mother appeared, the paternal grandmother left the residence, leaving Mathias in the care of his father and an adult friend. Although father admitted that he knew Mathias was not to be left unsupervised with mother, he exited the residence for approximately 20 minutes to smoke a cigarette and use his phone. When he returned, he discovered that mother had absconded with the child. Father called mother multiple times, but she did

not pick up. He and the paternal grandmother searched the apartment complex to no avail. The maternal grandmother also contacted the police, but was told they could not interfere because mother retained her parental rights.

Mother returned the minor to the paternal grandmother's home the next morning, February 17. The social worker noted at that time that the minor appeared clean and was dressed appropriately, but mother's left eye and nose were bruised, reportedly as the result of a physical altercation. Mother told the social worker that she had been making unannounced visits to the minor daily for at least an hour and that she had been in and out of the paternal grandmother's home since 11:00 am on the day of the incident. She stated that she took Mathias because she had "full rights to him" and could take him anytime she wanted. Mother further indicated that she would oppose permanent guardianship of Mathias by the paternal grandmother, but would agree to a temporary arrangement while she completed a substance abuse program.

As a result of mother's actions, Mathias was detained by the Department on February 17, 2015, and placed in foster care. On February 19, 2015, a petition was filed with respect to both Mathias and A.S.H., indicating that they were described by section 300, subdivisions (b), (g), and (j).<sup>2</sup> Mathias was formally detained at the detention hearing on February 20, 2015, and a further hearing with respect to detention was set for February 26. Also on February 20, the paternal grandmother filed a Petition for Writ of Habeas Corpus against the social worker assigned to Mathias' case. She requested that Mathias be returned to her custody, indicating that she felt the Department and the police had kidnapped the child. She also asked for a protective order against mother. At the continued detention hearing on February 26, 2015, the parties discussed the possibility of the minor living with the paternal grandmother. It was noted, however, that father also lived in the residence. In the end, the juvenile court made no changes to the detention orders, refusing to place with the paternal grandmother.

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<sup>2</sup> Ultimately, the operative petition in this matter became the third amended petition filed on April 1, 2015, which includes not only Mathias and A.S.H., but I.R.L. as well.

The Department filed its jurisdictional report on March 16, 2015. It indicated that mother admitted to recent, daily methamphetamine use. Moreover, although her case plan involving her older children required her to attend a residential substance abuse program and she had received several referrals from Alameda County social workers, mother had made no effort to enter treatment. With respect to father, the jurisdictional report stated that the social worker had scheduled an interview with him for March 10, 2015. However, father did not show up for his appointment, call to cancel, or otherwise make himself available to the social worker. Mother told the social worker that she had concerns about Mathias being placed with father and the paternal grandmother, both because father used methamphetamines and because “the paternal grandmother has drug trafficking going on in the apartment and there is constantly people coming in and out of the apartment who are buying and using drugs.” As for the Department, it remained concerned about both parents’ history of substance abuse. Mother had failed to follow through with treatment, despite over four years of family maintenance services. And father had admitted recent methamphetamine use and acknowledged that he was not in a position to care for the minor. The Department therefore recommended that the allegations in the petition be sustained and that Mathias remain in out-of-home care.

Neither parent, nor any extended family member, was present in court at the hearing on March 19, 2015. Thus, the matter was continued to April 16, 2015, for a combined jurisdictional and dispositional hearing. On April 1, 2015, as mentioned above, the Department filed its Third Amended Petition with respect to Mathias.

The Department filed its dispositional report in advance of the April 16 hearing, recommending that Mathias remain in out-of-home care and that both parents be offered reunification services. Although mother had indicated in February 2015 that she was finally ready to enter residential treatment, by the end of March she stated that she was living with friends and working and therefore inpatient treatment would not be the best for her. She had not visited with any of her children since their detention. Father, in contrast, was visiting appropriately with Mathias. He claimed that he was Mathias’ primary caregiver before the minor was taken into protective custody, stating that he

would feed the infant, rock him to sleep, play with him, bathe him, and read to him. He further reported being unemployed and receiving social security benefits for Tourette's Syndrome, although both he and the paternal grandmother reported that he had "grown out" of the Tourette's. With respect to substance abuse, father admitted only to past use of marijuana. He claimed that his hospitalization for methamphetamine induced psychosis was the result of drinking from someone else's glass at a party.

Mathias was placed in foster care with I.R.L. and A.S.H. He was described as healthy and developmentally normal, although his immunizations needed to be updated as he had only attended one doctor's appointment in his first seven months. A Permanency Team Meeting was held regarding Mathias on April 9, 2015, and attended by father, the paternal grandmother and the paternal grandmother's fiancé. If neither father nor mother could reunify with Mathias, father requested the following placements in descending order of priority: paternal grandmother; paternal aunt Sharanda; paternal cousin Ashley; or paternal aunt Yvett. Father also indicated, however, that he would like Mathias to remain with his siblings if he was ever moved, because it was obvious to him that the siblings love each other very much.

With respect to possible relative placement, the dispositional report indicated that the paternal grandmother had asked to be assessed as a placement option for Mathias and also, potentially, for I.R.L. At the time the dispositional report was written, the paternal grandmother and her fiancé had been fingerprinted, but a paternal uncle who lived in the home had not yet completed his fingerprint screening. Moreover, according to the report, it appeared based on the two background checks that had been conducted that both the paternal grandmother and her fiancé would need to complete the exemption process in order to be considered for placement.

The Department reported continuing concerns that mother and father were using/abusing substances or had a history of substance use/abuse. It opined that the risk to Mathias if he was returned to his father's care was "very high" as father had not begun to address the concerns that brought him to the attention of the Department. Specifically, although it was apparent that father loved Mathias, his unaddressed substance abuse

issues were negatively impacting the minor as evidenced by father's failure to meet Mathias' medical needs, his recent hospitalization for methamphetamine induced psychosis, and his failure to protect the minor from his mother.

Father was the only family member present at the jurisdictional/dispositional hearing on April 16, 2015. At that time, the case was set for a contested hearing on May 14, 2015. On the date set for the contested hearing, the paternal grandmother appeared, but neither parent was present. The Department requested a continuance because the social worker was out on medical leave and the father of one of Mathias' siblings had new counsel. The juvenile court granted this request, and thus the contested hearing was continued to June 3, 2015.

No parent or extended family member appeared at the continued jurisdictional/dispositional hearing on June 3, 2015. Parents' counsel therefore objected and submitted, and the juvenile court found Eric H. to be Mathias' presumed father; sustained the petition allegations; and found Mathias to be a child described by subdivisions (b), (g), and (j) of section 300. The court went on to follow the recommendations of the Department, ordering reunification services for both mother and father. It also found the Indian Child Welfare Act (ICWA) inapplicable to Mathias' case, based on the compliance documentation previously filed by the Department. At the end of the hearing, the court noted that the paternal grandmother had submitted a petition for temporary guardianship and request for restraining order, but had not actually filed them. Moreover, the paternal grandmother was not present, although the juvenile court thought it "told her to come back today." Under these circumstances, the court found the pleadings inappropriate and dismissed them without prejudice. A six-month review hearing was set for November 19, 2015.

Thereafter, the paternal grandmother filed a number of documents with the juvenile court. Specifically, on June 11, 2015, she filed an Application and Declaration for Access to Juvenile Case File in Possession of Juvenile Court Without a Court Order, checking the box indicating that she was entitled to inspect the court file because she was the minor who is the subject of the proceeding. On June 29, 2015, she filed a Petition for

Appointment of Temporary Guardian under the Probate Code, seeking guardianship of Mathias. And, on that same date, she also submitted a Request for Disclosure of Juvenile Case File, seeking a transcript for the combined jurisdictional and dispositional hearing on June 3, 2015. She claimed that there had been a family emergency that day that kept her from court. The juvenile court set a hearing for July 23, 2015, to consider all of the paternal grandmother's various requests.

At the July 23 hearing, the paternal grandmother was present unrepresented. Father was not present. The juvenile court allowed the paternal grandmother to argue her position. She claimed that she had been Mathias' caretaker since he was born, as his parents were both staying with her. She believed the minor had been removed by the Department because she "wasn't his guardian yet." Although she admitted that the Department talked with her about placement after Mathias was detained, she stated that she was still waiting for the agency to conduct a home visit.

The court noted that the paternal grandmother's petition under the Probate Code was not appropriate in the juvenile court, but understood that the issue was really about placement of Mathias. Counsel for the Department informed the court that the paternal grandmother had begun the placement process. However, as stated above, background checks revealed that both she and her fiancé would need to obtain criminal exemptions before she could be considered as a placement of the minor. In addition, there was an uncle residing in the home that had not yet been screened. According to the Department's attorney, the home would not be inspected until the paternal grandmother, her fiancé, and the uncle had all been successfully cleared. The paternal grandmother claimed not to have been told that anything further was required. The Department, in contrast, stated that both she and her fiancé should have received letters. In order to obtain an exemption, the paternal grandmother would need to collect all of the information regarding the relevant criminal history and make a request in writing.<sup>3</sup>

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<sup>3</sup> The paternal grandmother also mentioned that she worked for a disabled adult and had previously received an exemption for that job. On appeal, she claims that she would likely have been cleared for placement in this case because she had already received an



The juvenile court asked father's attorney if he had any position on the paternal grandmother's requests, to which counsel for father replied: "No, your Honor. I have been attempting to reach my client, to no avail." In the end, the court denied the paternal grandmother's petitions for temporary guardianship of Mathias and for court transcripts. The court went on to instruct the paternal grandmother, however, that typically relatives do get preference under the dependency laws and that the best thing that she could do was to see if she could clear her exemptions. Moreover, recognizing that it sounded like the paternal grandmother was "hung up in the bureaucracy here someplace," the court ordered the Department to contact the paternal grandmother and try to work through the process with her. It then confirmed the six-month review date of November 19, 2015.

The paternal grandmother had previously filed a timely notice of appeal contesting the juvenile court's dispositional orders. She subsequently filed a notice of appeal with respect to the court's July 2015 Order Denying Placement. Father also filed a timely notice of appeal from the juvenile court's July 2015 Order Denying Placement. All of the appeals related to Mathias' placement were subsequently consolidated by order of this court dated October 1, 2015. They are now before us for resolution.

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exemption in another context. However, as the Department correctly points out, the standards for an in-home supportive service (IHSS) exemption are different than the standards for a relative placement exemption. (See §§ 361.4, 12305.81, 12305.86 & 12305.87; Health & Saf. Code, § 1522.) Moreover, even if the paternal grandmother did receive an exemption, the entire household would still need to be cleared before Mathias could be placed in her care. (§ 361.4, subd. (b), (c) & (d).) What this information does show is that the paternal grandmother does have a criminal history requiring an exemption and that she is aware of and understands the exemption process.

## II. DISCUSSION

### A. *Father's Appeal*

Father argues on appeal that the paternal grandmother's petition for temporary probate guardianship of Mathias was, in substance, a placement request under the dependency laws. On this basis, he contends that it was an abuse of discretion for the juvenile court to deny the paternal grandmother placement of the minor and to excuse "the agency's inaction" with respect to the relative placement process at the July 2015 hearing. He identifies a further abuse of discretion in the juvenile court's failure to schedule a timely follow-up hearing on placement after the July 2015 hearing. We agree with the Department, however, that father has forfeited his contentions by failing to raise them in the juvenile court.

Father's appeal is from the juvenile court's July 2015 Order Denying Placement. However, the record is clear that father was not present and did not participate in the July 2015 hearing. Thus, father did not object in the juvenile court on any of the bases he now raises before us. Rather, as stated above, when queried by the court if father had a position on the paternal grandmother's requests, counsel for father stated: "No, your Honor. I have been attempting to reach my client, to no avail."

Moreover, although the dispositional report dated April 14, 2015, indicated that father would like Mathias to be placed with the paternal grandmother, it also stated that he would like Mathias to remain in the same home with his half-siblings if he was ever moved from his current foster home. Thus, it is unclear what his position on immediate placement of the minor with the paternal grandmother would have been. In addition, father failed to appear at the June 2015 dispositional hearing and argue for relative placement. And, he failed to file a timely notice of appeal from the dispositional hearing—when orders were made placing the minor in foster care—and thus cannot now challenge those orders. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150 [unappealed dispositional orders are "final and binding and may not be attacked on an appeal from a later appealable order"].) All of these circumstances lend further support

to the conclusion that father failed to take a position before the juvenile court with respect to Mathias' placement.

Generally, such a failure to object in the court below forfeits a parent's right to pursue an issue on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 & fn. 2 (*S.B.*), superseded by statute on other grounds as stated in *In re S.J.* (2008) 167 Cal.App.4th 953, 962; *In re Dakota S.* (2000) 85 Cal.App.4th 494, 502; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 411-413.) Further, although an appellate court has the discretion to excuse such forfeiture, it should do so "rarely and only in cases presenting an important legal issue." (*S.B.*, *supra*, 32 Cal.4th at p. 1293.) This is especially true in juvenile dependency cases, which involve the well-being of children and in which "considerations such as permanency and stability are of paramount importance." (*Ibid.*) We see no special circumstances here that would cause us to exercise our discretion to overlook father's inattention to this issue in the juvenile court and excuse his forfeiture.<sup>4</sup> We therefore decline to consider the placement issues raised in the context of father's appeal. We will, however, address the challenges to Mathias' placement asserted in the two appeals filed by the paternal grandmother.

#### **B. Paternal Grandmother's Appeals**

All of the paternal grandmother's arguments on appeal—both from the dispositional orders and from the July 2015 Order Denying Placement—allege, in one way or another, the improper application of section 361.3 to this case. "Section 361.3 gives 'preferential consideration' to a relative request for placement, which means 'that the relative seeking placement shall be the first placement to be considered and investigated.' " (*In re Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1033

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<sup>4</sup> Father argues at length in his briefing that he has standing on appeal to raise the issue of Mathias' placement with the paternal grandmother. While this may be true, the issues of standing and forfeiture are analytically distinct. (See, e.g. *In re R.V.* (2012) 208 Cal.App.4th 837, 848-849 [addressing the issue of standing only after concluding that a claim had not been forfeited].) Thus, the fact that he may have standing to appeal the question of his son's placement does nothing to save him from the consequences of his inaction before the juvenile court with respect to that issue.

(*Cesar V.*), quoting § 361.3, subd. (c)(1).) In determining the suitability of such a relative, the social worker and the court are instructed to consider a number of factors, including: the best interest of the child; the wishes of the parent, relative, and child; the placement of siblings and half-siblings in the same home; the “good moral character” of the relative and any other adult living in the home; the nature and duration of the relationship between the child and relative, and the relative’s desire to care for, and provide legal permanency for, the child; the relative’s ability to provide a safe, secure, and stable environment for the child, to protect the child from his or her parents, and to facilitate reunification efforts; and the safety of the relative’s home.

(§ 361.3, subd. (a)(1)-(8).) The social worker’s assessment of a prospective relative placement in accordance with these factors must be documented as part of the social study included in the dispositional report. (*Id.*, subd. (a).) The juvenile court then determines if placement with the designated relative is appropriate based on its independent consideration of all relevant factors. (*Cesar V.*, *supra*, 91 Cal.App.4th at p. 1033.)

The abuse of discretion standard governs our appellate review of a juvenile court’s determination regarding placement of a child with a relative pursuant to section 361.3. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) Thus, a “reviewing court should interfere only ‘ “if we find that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that [he or she] did.” ’ ” (*Ibid.*) Our review of the interpretation and application of a statute, however, is de novo. (*In re Isabella G.* (2016) 246 Cal.App.4th 708, 718 (*Isabella G.*).)

In the present case, the paternal grandmother argues that the juvenile court abused its discretion by failing to consider her as the first placement option for Mathias pursuant to the mandate of section 361.3. She also contends that the relative placement preference under section 361.3 does not expire after the dispositional hearing, especially when, as here, she requested placement prior to disposition. And, she argues that her failure to obtain guardianship of Mathias prior to his detention should not be viewed as a basis for denying her preferential treatment under section 361.3. In addition, the paternal

grandmother claims that the juvenile court prejudicially erred when it abdicated its duty to evaluate the basis for the Department's decision not to place the minor in her care. She asserts that the court should have ordered the Department to prepare a section 361.3 assessment and then should have conducted an independent evaluation of the paternal grandmother as a placement option under the criteria set forth in the statute.

The Department, in contrast, asserts that a different statute applies in this case, section 361.4. We agree. Pursuant to section 361.4, “[b]efore a child is formally placed in a relative’s home, the social worker must conduct a visit to the home, a criminal records check, and a child abuse index check.” (*In re M.L.* (2012) 205 Cal.App.4th 210, 223 (*M.L.*), citing § 361.4, subds. (a)–(c).) “The criminal records check must be performed on all persons over 18 years of age who live in the home, ‘and on any other person over 18 years of age . . . known to the placing entity who may have significant contact with the child, including any person who has a familial or intimate relationship with any person living in the home.’ ” (*Ibid*, quoting § 361.4, subd. (b).) If the criminal records check indicates that none of the persons screened have criminal convictions (other than minor traffic violations), “the social worker and the court may consider the home for placement of the child under section 361.3. (§ 361.4, subd. (d)(1)”; *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1055-1056 (*Esperanza C.*).) There appears to be no legal impediment precluding a child welfare agency from waiting until after criminal background checks are successfully completed to evaluate the home of a prospective relative placement. (§ 361.4, subds. (a) & (d)(2); cf. *In re S.W.* (2005) 131 Cal.App.4th 838, 844 & fn. 9 [noting such a procedure in San Diego County].)

However, “ ‘[i]f the criminal records check indicates that the person has been convicted of a crime that [would preclude licensure as a foster home] under Section 1522 of the Health and Safety Code[, that is, any crime other than a minor traffic violation], the child shall not be placed in the home unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as

to justify the placement and not present a risk of harm to the child . . . .’<sup>5</sup> (*In re H.K.* (2013) 217 Cal.App.4th 1422, 1430, (*H.K.*), quoting § 361.4, subd. (d)(2).) Thus, absent an exemption, “[t]he prohibition against placing a dependent child in a home where the child would have contact with an adult who has been convicted of a crime, other than a minor traffic violation, is mandatory.” (*H.K.*, *supra*, 217 Cal.App.4th at p. 1431.) A juvenile court may review the decision of a child welfare agency not to request an exemption for a disqualifying offense for abuse of discretion. (*Esperanza C.*, *supra*, 165 Cal.App.4th at p. 1056.)

If a child welfare agency receives a request in writing to grant an exemption for a disqualifying conviction, it evaluates the conviction—based on information provided by the applicant—under numerous factors outlined by regulation, such as the nature and circumstances of the crime, the age of the crime, activities since conviction that would indicate changed behavior, and evidence of honesty and truthfulness as revealed in exemption application documents and interviews. (*Esperanza C.*, *supra*, 165 Cal.App.4th at pp. 1056-1057; Cal. Code Regs., tit. 22, § 80019.1.) A child welfare agency may deny an exemption request if the applicant fails to provide documents as requested by the agency. (Cal. Code Regs., tit. 22, § 80019.1(d)(1).) Ultimately, the decision to grant or deny a criminal records exemption “is an executive function that lies exclusively with the [Department].” (*M.L.*, *supra*, 205 Cal.App.4th at p. 225.) It is therefore subject to administrative review and may be reviewed by a juvenile court only for abuse of discretion. (See *Esperanza C.*, *supra*, 165 Cal.App.4th at p. 1060; *S.W.*, *supra*, 131 Cal.App.4th at p. 848.) Moreover, if a juvenile court determines that the agency did, in fact, abuse its discretion, this does not give it the authority to grant the exemption request or place the minor in the relative’s home. (*M.L.*, *supra*, 205 Cal.App.4th at p. 227.)

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<sup>5</sup> In 2001, section 361.4 was amended to allow a county to grant exemptions if the California Department of Social Services gives it permission to do so. (§ 361.4, subd. (d)(3)(A); *S.W.*, *supra*, 131 Cal.App.4th 838, 846, fn. 11.) From the record in this case, it appears that the Department has been given the authority to grant exemptions pursuant to this provision.

Rather, the court is limited to directing the agency to reconsider the exemption request using the appropriate legal standard. (*Ibid.*)

Here, because both the paternal grandmother and her fiancé had criminal convictions, albeit potentially exemptible ones, section 361.4 rather than section 361.3 controls. (See *S.W.*, *supra*, 131 Cal.App.4th at pp. 845-847.) Under such circumstances, the Department was absolutely precluded from placing Mathias with the paternal grandmother until exemptions were granted and the uncle residing in the home was also cleared. (§ 361.4, subds. (b)(1) & (d)(2).) Further, as stated above, the juvenile court did not have the authority to grant exemptions and/or place Mathias with the paternal grandmother. (*M.L.*, *supra*, 205 Cal.App.4th at p. 227.) Given these facts, the paternal grandmother's request for placement of the minor was simply premature. Indeed, she was not even at the point where it would have been appropriate for the juvenile court to order and consider an analysis under section 361.3. In such a situation, a reasonable response to the paternal grandmother's complaint was to order the Department to contact her and help her work through the exemption process. This is exactly what the juvenile court did. We see no error, and certainly no abuse of discretion.<sup>6</sup>

If one thing is abundantly clear in this case, it is that the paternal grandmother is very interested in caring for Mathias and has been requesting placement of the minor in various ways essentially since he was detained by the Department. We are sympathetic

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<sup>6</sup> The paternal grandmother also joined in the arguments made by father in his briefing. Our analysis and rejection of her claims largely disposes of his contentions as well. As to father's argument that the juvenile court abused its discretion in failing to set a follow-up hearing on the relative placement issue after the July 2015 hearing, the juvenile court certainly had the discretion to do so. (Cf. *Isabella G.*, *supra*, 246 Cal.App.4th at p. 722, fn. 11.) We do not, however, see any abuse of discretion in the court's failure to schedule such a hearing. At this stage in the proceedings, there is significant uncertainty as to whether the paternal grandmother will ever be able to clear her home through the exemption process so that the relative placement preference under section 361.3 can even be considered. Moreover, though unrepresented, the paternal grandmother has repeatedly shown her ability to get her issues before the juvenile court for resolution. Should she be unhappy with the outcome of the administrative process, we have no doubt that she will bring the matter to the attention of the court.

to her complaints that the relative placement process is confusing and that the Department, perhaps, was not particularly proactive in helping her navigate it. Indeed, the juvenile court recognized that the paternal grandmother was “hung up in the bureaucracy here someplace,” when it ordered the Department to contact her and try to work through the exemption requirements. However, while we can certainly envision a situation where a child welfare agency might purposely drag its feet or otherwise sabotage a relative placement, requiring a stronger response from the juvenile court, the record here does not reveal that this is such a case. (Cf. *Isabella G.*, *supra*, 246 Cal.App.4th 708, 712 [child welfare agency failed to complete a relative home assessment for over 22 months despite repeated requests and repeated assurances it would do so; agency misrepresented the law on placement to gain cooperation of relatives in the delay; after court involvement, home was approved in less than three weeks].)

Moreover, it is far from clear at this point in the proceedings that the paternal grandmother’s placement request will ultimately be successful. Both she and her fiancé will need to obtain criminal exemptions, and the uncle residing in the home will also need to be screened and cleared. In addition, the fact that father lives in the paternal grandmother’s home complicates placement and appears, in fact, to be a dominant reason why the juvenile court declined to place Mathias with the paternal grandmother at the detention hearing. Finally, Mathias is currently in a successful placement with two half-siblings, there are allegations of drug use in the paternal grandmother’s home, and the paternal grandmother failed to protect the minor from mother in the incident which led to the filing of the petition. All of these factors will need to be considered by both the Department and the juvenile court if a formal assessment of the paternal grandmother’s home pursuant to section 361.3 is ever warranted. (§ 361.3, subd. (a)(1)-(8).)

### **III. DISPOSITION**

The judgment is affirmed.



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REARDON, J.

We concur:

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RUVOLO, P. J.

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RIVERA, J.

*In re Mathias H.* A145624 & A146233